



**EDMUND RICE EDUCATION  
AUSTRALIA**

<b>VERSION CONTROL</b>		
<b>Version Date</b>	<b>Author</b>	<b>Changes</b>
20 September 2012	Paul Oakley	Original approved version
August 2020	Paul Linossier	In tracker in Council EO files.
2 September 2020	Paul Oakley/ Graham Goerke	Version approved by Council September 2020 for sending to VRQA
7 May 2021	Moore	In tracker in Council EO files.
24 May 2021	Graham Goerke	Minor change. Endorsed and sent to Rome for approval
21 June 2021	Graham Goerke / Moore	Inclusion of 'the Association' in Clause 8.
22 June 2021		Adopted at TEREAGM 22 June 2021

# Constitution

Trustees of

Edmund Rice Education Australia

## **MOORES**

Level 1, 5 Burwood Road  
HAWTHORN VIC 3122

Tel: (03) 9843 2100

Fax: (03) 9743 2102

Ref: RLS/200786

**Moores Legal Pty Ltd**

ACN 005 412 8

## TABLE OF CONTENTS

1.	Preamble .....	4
2.	Name of the Association .....	4
3.	Definitions and interpretation .....	4
4.	Principal Purpose of the Association.....	6
	<b>4.1 Principal Purpose .....</b>	<b>6</b>
	<b>4.2 Furthering the Principal Purpose .....</b>	<b>6</b>
5.	Not-for-profit .....	7
6.	Council .....	7
	<b>6.1 Role of the Council.....</b>	<b>7</b>
	<b>6.2 Council Composition.....</b>	<b>8</b>
	<b>6.3 Convening General Meetings .....</b>	<b>8</b>
	<b>6.4 Adjournment .....</b>	<b>8</b>
	<b>6.5 Quorum .....</b>	<b>8</b>
	<b>6.6 Voting .....</b>	<b>9</b>
	<b>6.7 Circulated Resolutions.....</b>	<b>9</b>
	<b>6.8 The Council's Reserve Powers.....</b>	<b>9</b>
7.	The Board.....	10
	<b>7.1 Role and Powers of the Board.....</b>	<b>10</b>
	<b>7.2 Appointment of Board Members .....</b>	<b>10</b>
	<b>7.3 Office bearers .....</b>	<b>11</b>
	<b>7.4 Removal of Board Members .....</b>	<b>11</b>
	<b>7.5 Ceasing to be a Board Member .....</b>	<b>11</b>
	<b>7.6 Appointment of attorneys .....</b>	<b>12</b>
	<b>7.9 Board meetings .....</b>	<b>13</b>
	<b>7.10 Circulated Resolutions.....</b>	<b>13</b>
	<b>7.11 Delegation .....</b>	<b>14</b>
8.	Executive Director.....	14
9.	Committees .....	14
10.	Indemnity and insurance.....	14

- 11. Meeting using technology ..... 15
- 12. Notices ..... 15
- 13. Common Seal ..... 16
- 14. Records, Accounting and Audit..... 16
  - 14.1 Accounts and other records of the Association ..... 16**
  - 14.2 Audit ..... 16**
  - 14.3 Financial statements ..... 16**
  - 14.4 Financial instruments..... 16**
- 15. Winding up..... 16
- 16. Amendment of Constitution..... 17

# Constitution of Trustees of Edmund Rice Education Australia

## 1. Preamble

---

- (a) Edmund Rice Education Australia is recognised by the Catholic Church as a Public Juridic Person. The members of the Public Juridic Person are referred to as the Council.
- (b) Edmund Rice Education Australia is missioned by the Church to ensure the continuation of the Charism of Blessed Edmund Rice in school ministry.
- (c) Edmund Rice Education Australia carries out its activities in the civil sphere through a body corporate known as "Trustees of Edmund Rice Education Australia" (**the Association**) incorporated under the *Roman Catholic Church Communities Lands Act 1942* (NSW) (**the Act**).
- (d) The objects of the Association include the operation and conduct of educational bodies, known in Australia as Catholic Schools in the Edmund Rice tradition.
- (e) Under canon law, the Association is governed by the Statutes. The members of Council are the canonical stewards of the Association, responsible for ensuring the Association acts in accordance with the beliefs, teaching, discipline and canonical laws of the Church and that the Association's property administration is consistent with Canon Law.
- (f) The Statutes empower the Council to prepare and approve a Constitution for the Association. The Council has adopted this Constitution for the Association, establishing the Board as the governing body of the Association's Educational Bodies.

## 2. Name of the Association

---

The name of the Association is "Trustees of Edmund Rice Education Australia" (**the Association**).

## 3. Definitions and interpretation

---

- (a) In this Constitution the following definitions apply:

**ACNC Legislation** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (Cth).

The **Act** means the *Roman Catholic Church Communities Lands Act 1942* (NSW)

**Association** means the statutory corporation called Trustees of Edmund Rice Education Australia.

**Board** means the persons for the time being constituting the Board of the Association.

**Board Member** means a member from time to time of the Board.

**Canon Law** means the universal law of the Church in the 1983 *Code of Canon Law* and universal legislation as well as particular and proper law enacted by the competent ecclesiastical authority and **Canonical** has a corresponding meaning.

**Catholic School** means a school conducted in accord with the mission of the Church and Canon Law.

**Chair** means the Board Member holding for the time being the office of Chair of the Board.

**Charter** means the articulation of the mission of a Catholic School in the Edmund Rice tradition.

**Church** means the Roman Catholic Church.

**Congregation Leader** means the Congregation Leader of the Catholic religious institute known as the Congregation of Christian Brothers (previously known as the Brothers of the Christian Schools of Ireland) founded by Blessed Edmund Rice in Ireland in 1802.

**Committee Member** means a member of a Committee established by the Board.

**Corporations Act** means the *Corporations Act 2001* as amended and any statutory modification or re-enactment of it.

**Council** means the members of the Association appointed by the Congregation Leader with the consent of his Council.

**Councillor** means a member from time to time of the Council.

**Deputy Chair** means the Board Member holding the office of Deputy Chair of the Board.

**Deputy President** means the Councillor holding the office of Deputy President of the Association.

**Early Learning Centre** means:

- (a) in respect of Educational Bodies located in Victoria:
  - (i) a not-for-profit approved education and care service (within the meaning of the *Education and Care Services National Law Act 2010* (Vic));
  - (ii) which provides education and care to children, including a three or four year old kindergarten program; and
  - (iii) that operates as a feeder for enrolments to a School located in Victoria; and
- (b) in respect of Educational Bodies located outside Victoria, a not-for-profit approved education and care service which provides education and care to children including children younger than the minimum compulsory school age.

**Educational Body** means a School or Early Learning Centre owned, governed, managed and conducted by the Association and **Educational Bodies** has the corresponding meaning.

**EREA** means Edmund Rice Education Australia being a public juridic person of Pontifical right constituted upon the petition of the Congregation Leader and approved by the Holy See.

**Executive Director** means the person appointed by the Board pursuant to clause 8.

**Financial Plan** means the documents establishing, from time to time, the current and future financial forecasts, including the budget and proposed loans and borrowings of the Association in accordance with good governance practices.

**Financial Year** means the year ending on the 31<sup>st</sup> December.

**Formation** means the response through baptism to nurturing spirituality, mission and ministry within the context of EREA.

**Foundations** means the statement of the elements which underpin the continuance of the charism of Edmund Rice in school ministry as Church mission.

**Holy See** means the central government of the Church.

**Oceania Province** means the province known as Oceania Province of the Religious Institute and includes any civil law constituted entity for the purposes of conducting the business of the province.

**President** means the person holding for the time being the office of President of the Association.

**Principal Purpose** means the purpose set out at clause 4.1.

**Renewal** means the statement which defines and guides the process for authentication of a school as a Catholic School in the Edmund Rice tradition.

**Rule** means a rule of this Constitution.

**School** means an Educational Body providing education to individuals of compulsory school age or older during normal school hours.

**Statutes** means the canonical statutes under Canon Law for EREA.

**Strategic Plan** means the document establishing, from time to time, the intended strategic directions of the Association having regard to its capabilities, its strengths, its challenges, its opportunities and the risks that may occur in the effective and efficient operation of the Association and which includes the Financial Plan.

**Tax Act** means the *Income Tax Assessment Act 1997* as amended and any statutory modification or re-enactment of it.

**Treasurer** means the Councillor holding for the time being the office of Treasurer of the Association.

- (b) Unless the context otherwise indicates words importing the singular shall include the plural and vice versa, words importing a gender shall include other genders and vice versa and references to a person shall be construed as including reference to an individual, firm, body corporate or unincorporated association (whether incorporated or not), trust, government, and statutory authority or agency.
- (c) Any reference to legislation is a reference to that Act as modified or amended from time to time, and includes any regulations made under those Acts, any exemption or modification to those Acts, and also includes any legislation or regulation which replaces or supplements those Acts.

## 4. Principal Purpose of the Association

---

### 4.1 Principal Purpose

The Principal Purpose of the Association is to advance Catholic education, including by:

- (a) supporting and advancing Catholic education in the Edmund Rice tradition in fulfilment of the mission of Jesus Christ;
- (b) owning, governing, managing and conducting Educational Bodies in accordance with the Statutes and all relevant legislation; and
- (c) providing support, services, direction and leadership to those Educational Bodies.

### 4.2 Furthering the Principal Purpose

- (a) The Association has all the powers given to it by the Act, which it may only exercise:
  - (i) in furtherance of the Principal Purpose; and
  - (ii) in accordance with the beliefs, teaching, discipline and canonical laws of the Church.

- (b) The Association may further the Principal Purpose by (without limitation):
  - (i) employing principals and other staff in the Educational Bodies;
  - (ii) owning the assets of the Educational Bodies;
  - (iii) assisting Educational Bodies with, or managing on behalf of Educational Bodies, business and compliance activities;
  - (iv) assisting Educational Bodies to develop curricula and provide ongoing curriculum management and support;
  - (v) providing Educational Bodies with access to resources, development opportunities, support services and similar operational support; and
  - (vi) such further ancillary means and activities, as in the opinion of the Association, further the Principal Purpose.

## **5. Not-for-profit**

---

- (a) The income and property of the Association must be applied solely towards the promotion of the Principal Purpose.
- (b) No portion of the profits, income or property of the Educational Bodies may be paid or transferred directly or indirectly to a Councillor or Board Member except where the Board confirms that all legal and regulatory requirements have been met and approves a payment:
  - (i) in return for any services rendered (other than in the capacity of Councillor or Board Member) or goods supplied at fair and reasonable rates or rates more favourable to the Association in the ordinary and usual course of business to the Association; or
  - (ii) of out of pocket expenses properly incurred in performing a duty as Board Member or Councillor.
- (c) The Association may pay reasonable fees to a Board Member or Councillor for acting in those capacities but not from the profits, income or property of the Educational Bodies.
- (d) If the Association closes a School, any surplus assets of the School remaining after payment of the School's liabilities must be:
  - (i) used by the Association to provide education services to school-age children or for other not-for-profit purposes; or
  - (ii) given to a not-for-profit entity operating within Australia that provides education services to school-age children or that has similar purposes to the Association.

## **6. Council**

---

### **6.1 Role of the Council**

- (a) The members of the Council are the canonical stewards of the Association.
- (b) In addition to exercising the rights and responsibilities set out in this Constitution, Council is responsible for ensuring that the Association acts in accordance with the beliefs, teaching, discipline and canonical laws of the Church and that the Association's property administration is consistent with Canon Law and the Principal Purpose.

## **6.2 Council Composition**

- (a) The Council comprises the members of EREA appointed pursuant to the Statutes from time to time.
- (b) The Council must appoint a Council President, Deputy President and Treasurer by majority resolution.
- (c) The Council President, Deputy President and Treasurer may be removed by majority resolution.
- (d) If the position of President becomes vacant during a term of appointment, the Deputy President will assume the role of President until the Council appoints a new President.
- (e) If the President is absent or unable or unwilling to act, the Deputy President will act in the place of the President.

## **6.3 Convening General Meetings**

- (a) A General Meeting of the Council may be convened by the Council President at any time or at the request of the Board.
- (b) 21 days' notice of General Meetings must be given to Councillors (excluding the day on which the notice is served or deemed to be served and the day of the meeting). Council may waive this requirement by unanimous resolution.
- (c) The notice of General Meeting must state the place, day and the hour of meeting and where there is special business the general nature of that business.
- (d) An Annual General Meeting of the Council must be held within six (6) months after the expiration of each Financial Year.
- (e) The business of an Annual General Meeting may include the following, even if not referred to in the notice of meeting:
  - (i) consideration of the audited annual financial accounts;
  - (ii) appointment or removal of Board Members;
  - (iii) appointment, removal and remuneration of the Auditor;
  - (iv) report of the President;
  - (v) Report of the Chair, which must include a finance report and a particular report as to how the operation of the Association has been consistent with the Statutes and achieved the carrying on of the ministry of Catholic education.
- (f) Any other business, at an Annual General Meeting or a General Meeting, shall be considered to be special business.

## **6.4 Adjournment**

- (a) The President may, with the consent of the Councillors present (and must if so directed by the Councillors present), adjourn a General Meeting.
- (b) No business may be transacted at any adjourned meeting other than the business left unfinished at the original meeting.
- (c) If a meeting is adjourned for thirty days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise it is not necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.

## **6.5 Quorum**

- (a) No business shall be transacted at any General Meeting unless a quorum of Councillors



is present. A quorum is four (4) Councillors.

- (b) If a quorum is not present within 30 minutes of the commencement time, the meeting shall stand adjourned to the same day, time and place in the following week (or to such other day and at such other time and place as the President may determine).
- (c) If at the adjourned meeting a quorum is not present within 30 minutes of the commencement time, the meeting is dissolved.

## **6.6 Voting**

- (a) Subject to this Constitution, the Council must endeavour to resolve matters arising at any General Meeting by consensus after discernment. However if the matter is put to the vote, it must be decided:
  - (i) on a show of hands; and
  - (ii) by majority vote (unless otherwise specified under clause 6.8 or clause 16).
- (b) A declaration by the President is conclusive evidence of the result of a vote by show of hands, provided that the declaration reflects the show of hands.
- (c) Neither the President nor the minutes need state the number or proportion of the votes recorded in favour or against the resolution (unless the vote relates to a matter specified under clause 6.8 or clause 16).

## **6.7 Circulated Resolutions**

The Council may pass a resolution otherwise required or permitted to be passed at General Meetings without the General Meeting being held if all the Councillors who are entitled to vote on the resolution respond saying that they are in favour, as follows:

- (a) The wording of the resolution may be circulated by mail, email or other form of electronic transmission;
- (b) Councillors may respond by:
  - (i) signing and returning a copy of the posted document; or
  - (ii) responding by email or other form of electronic transmission including the wording of the resolution;stating whether or not the Councillor is in favour;
- (c) Provided all Councillors are in favour, the resolution is passed when the last Councillor responds.

## **6.8 The Council's Reserve Powers**

- (a) In addition to any other approvals required under this Constitution, the approval of four fifths of the Council (which may be communicated by the President) must be obtained before any Board decision takes effect to:
  - (i) amend the Charter, Formation, Renewal and Foundations documents;
  - (ii) set or materially change the Strategic Plan or Financial Plan of the Association;
  - (iii) appoint or remove the Executive Director;
  - (iv) borrow in excess of the amount set in the Financial Plan or prescribed in the Delegations of Authority Manual;
  - (v) sell, lease, mortgage, transfer, assign or encumber any property of the Association;

- (vi) acquire land or buildings;
  - (vii) act beyond any limits with respect to capital expenditure or other financial arrangements set by the Council from time to time or prescribed in the Delegations of Authority Manual;
  - (viii) incur expenditure in excess of any Financial Plan approved by the Council;
  - (ix) consolidate or merge the Association with any other organisation;
  - (x) cease to operate any Educational Body;
  - (xi) establish a new Educational Body;
  - (xii) grant any power of attorney; and
  - (xiii) end a relationship with a Ministry of the Oceania Province.
- (b) Contracts for the purchase of land may only be executed by the Council.
- (c) The following actions of the Association also require the approval of the Holy See:
- (i) any change to the Principal Purpose;
  - (ii) the suppression of the Association;
  - (iii) the sale, lease, mortgage or encumbrance disposition, or other form of alienation of the stable patrimony of the Association in excess of any amount established by the Holy See from time to time.
- (d) If there is a doubt as to whether a Board decision involves a reserve power under this clause 6 the ruling of the President shall be final and conclusive.

## **7. The Board**

---

### **7.1 Role and Powers of the Board**

- (a) The Board is the governing body of the Educational Bodies.
- (b) The Board must ensure that the Association complies with:
  - (i) all legal and regulatory requirements of civil law;
  - (ii) Canon Law; and
  - (iii) this Constitution.
- (c) The Board must govern the Educational Bodies and exercise all powers of the Association not required by Canon Law or this Constitution to be exercised by the Council.
- (d) All activities of the Educational Bodies are under the direction of, the Board.
- (e) Without limiting the generality of clause 7.1(c) but subject always to clause 6.8 and the terms of this Constitution, the Board may exercise all the powers of the Association to direct and defend litigation, borrow money, buy and sell property, charge any property or business of the Association or give any other security for a debt, liability or obligation of the Association or of any person.

### **7.2 Appointment of Board Members**

- (a) The Council appoints the Board Members.
- (b) The Board may recommend individuals to the Council for appointment to the Board.
- (c) There must be at least 5 and no more than ten Board Members.

- (d) The Board must comprise persons who:
  - (i) are not Councillors;
  - (ii) are not employees of the Association;
  - (iii) have suitable qualifications and experience;
  - (iv) are considered by the Council to be competent to participate in the continuation of the charism of Blessed Edmund Rice in school ministry as Church Mission and Catholic education;
  - (v) are not ineligible to be:
    - (A) a director under the *Corporations Act*; or
    - (B) a responsible person under the ACNC legislation; and
  - (vi) are “fit and proper persons” (or any equivalent requirement) for the purpose of any law pertaining to Educational Bodies.
- (e) Board Members may be appointed for a term not exceeding 3 years.
- (f) Board Members are eligible for re-appointment, provided that a Board Member must not serve continuously for more than ten (10) consecutive years.

### 7.3 Office bearers

- (a) The Council will appoint the Chair and Deputy Chair (**office bearers**) following discussion with the Board.
- (b) Office bearers may be appointed for a term not exceeding 3 years. Office bearers are eligible for re-appointment.
- (c) If the position of Chair becomes vacant during their term, the Deputy Chair may assume the role of Chair until the Council appoints a new Chair.
- (d) In the absence of the Chair, the Deputy Chair will act in the place of the Chair.
- (e) If the position of Chair or Deputy Chair becomes vacant the Council must endeavour to appoint a replacement within twenty eight (28) days of the vacancy occurring.
- (f) Office bearers may be removed from office prior to completion of their term by the Council.
- (g) The position of an office bearer will become vacant if they cease to be a Board Member.

### 7.4 Removal of Board Members

- (a) The Council may remove a Board Member by written notice signed by the President to the individual and the Board, stating that (as at the date stated on the notice) the individual is no longer a Board Member.
- (b) The Board may resolve to request that the Council removes a Board Member.
- (c) A Board Member who is the subject of a proposed resolution under clause 7.4(b) is entitled to make an oral and/or written submission to the Board Meeting at which the resolution is considered. If the Board resolves to make the request, a copy of any written submission by the Board Member must be given to the Council together with the request.

### 7.5 Ceasing to be a Board Member

- (a) A Board Member’s position becomes vacant if the Board Member:
  - (i) is absent without leave of the Board from three (3) successive Board meetings;

- (ii) resigns by notice in writing to the Chair and the President;
- (iii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (iv) fails to declare a material interest (whether direct or indirect) in any contract or proposed contract with the Association;
- (v) completes their term and are not re-appointed;
- (vi) is removed pursuant to clause 7.4; or
- (vii) cease to meet the eligibility requirements set out in clause 7.2.

## **7.6 Appointment of attorneys**

- (a) The Board may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Association for such purposes with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board) for such period and subject to such conditions as the Board thinks fit.
- (b) Any such power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney as the Board thinks fit.

## **7.7 Conflicts of interest**

- (a) A Board Member must disclose the nature and extent of any perceived or actual material conflict of interest to the other Board Members (or the Councillors if the other Board Members share that conflict).
- (b) A Board Member who has a material personal interest in a matter that is being considered by the Board:
  - (i) must not be present while the matter is being considered at a Board meeting; or
  - (ii) vote on the matter;
 unless permitted by clause 7.7(c).
- (c) Provided the Board approves and it is permitted by law, a Board Member may be present or vote if:
  - (i) the interest relates to an insurance contract that insures, or would insure, the Board Member against liabilities that the Board Member incurs as an officer of the Association;
  - (ii) the interest relates to any payment by the Association under clause 10 in respect of an indemnity or any contract relating to such an indemnity;
  - (iii) the interest relates to a contract the Association is proposing to enter into that:
    - (A) is subject to approval by the Council; and
    - (B) will not impose any obligation on the Association if it is not approved by the Council; or
  - (iv) the Board Members who do not have a material personal interest in the matter pass a resolution that:
    - (A) identifies the Board Member, the nature and extent of the Board Member's interest in the matter and how it relates to the affairs of the Association; and
    - (B) states that those Board Members are satisfied that the interest should not stop the Board Member from voting or being present.

## **7.8 Permissible conduct**

Provided a Board Member complies with clause 7.7 and the conduct is otherwise permitted by law, they may:

- (a) hold any office or place of profit in any other entity promoted by the Association or in which it has an interest of any kind;
- (b) enter into a contract or arrangement with the Association;
- (c) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Association, except as auditor;
- (d) sign or participate in the execution of a document by or on behalf of the Association; and
- (e) do any of the above despite the fiduciary relationship of the Board Member's office:
  - (i) without any liability to account to the Association for any direct or indirect benefit accruing to the Board Member; and
  - (ii) without affecting the validity of any contract or arrangement.

## **7.9 Board meetings**

- (a) The Board must meet together at least 6 times a year.
- (b) The Chair may at any time (and must, on the requisition of 3 Board Members) convene a meeting of the Board.
- (c) A quorum for a Board meeting is a majority of Board Members. No business may be transacted at any Board meeting unless a quorum is present.
- (d) The Chair or a majority of the Board Members may request the attendance at any meeting of the Board of any person who in their opinion may be able to assist the Board in any matter under consideration.
- (e) Board meeting minutes must be kept and signed as a true record of proceedings by the Chair following approval at the subsequent Board meeting.
- (f) The Board must provide a copy of all Board meeting minutes to the Council.
- (g) Subject to this Constitution, the Board must endeavour to resolve matters arising at any meeting of the Board by consensus after discernment. However if the matter is put to the vote, it must be decided by a majority of votes of Board Members present.
- (h) In the case of an equality of votes the chair of the meeting shall not have a second or casting vote.

## **7.10 Circulated Resolutions**

The Board may pass a resolution outside of a Board Meeting if all the Board Members who are entitled to vote on the resolution respond saying that they are in favour of the resolution, as follows:

- (a) The wording of the resolution may be circulated by mail, email or other form of electronic transmission;
- (b) Board Members may respond by:
  - (i) signing and returning a copy of the posted document; or
  - (ii) responding by email or other form of electronic transmission including the wording of the resolution;

- stating whether or not the Board Member is in favour;
- (c) Provided all Board Members are in favour, the resolution is passed when the last Board Member responds.

### **7.11 Delegation**

- (a) The Board may delegate all or any of its powers and functions (other than those which by law must be dealt with directly by the Board) to:
- (i) one or more Board Members;
  - (ii) a Committee;
  - (iii) the Executive Director;
  - (iv) a Principal of an Educational Body; or
  - (v) any other person.
- (b) The Board may revoke or vary any delegation.
- (c) A delegation made under this clause:
- (i) may include the power of sub-delegation (if appropriate);
  - (ii) must be consistent with the Delegations of Authority Manual (as amended by the Board from time to time);
  - (iii) must be by instrument of delegation; and
  - (iv) may be subject to such conditions and/or limitations as to the performance or exercise of any of the specified functions, powers and authorities delegated or as to time or other circumstances as may be specified in the resolution, instrument of delegation or terms of reference.
- (d) Notwithstanding any delegation made under this Constitution the Board may continue to perform or exercise all or any of the functions, powers and authorities delegated.

## **8. Executive Director**

---

The Board may (subject to clause 6.8) appoint an Executive Director to be responsible for the day to day management and general administration of the Association and the Educational Bodies, subject to the Board's supervision and lawful direction.

## **9. Committees**

---

- (a) The Board may establish Committees.
- (b) A Committee may include, or be comprised of, non-Board Members (provided that at least one Board Member must be appointed to each Committee).
- (c) The meetings and proceedings of Committees are:
- (i) subject to any terms of reference and/or instrument of delegation prescribed by the Board; and
  - (ii) otherwise governed as far as possible by the provisions of this Constitution which regulate the proceedings of the Board.

## **10. Indemnity and insurance**

---

- (a) The Association must indemnify and keep indemnified any person who is, or at any time has been, a Councillor, Board Member or Committee Member, against every action or

suit that shall be brought and maintained for anything done or omitted pursuant to the duties imposed as a Councillor, Board Member or Committee Member, provided that such indemnity shall not apply in respect of any fraudulent or criminal act or omission by that individual.

- (b) Every officer of the Association will be indemnified out of the property of the Association against any liability incurred in that capacity to another person other than to the Association unless the liability arises out of conduct involving a lack of good faith.
- (c) A liability in clause 10(a) and 10(b) includes, but is not limited to, any loss, cost or expense suffered or incurred by the officer, Councillor, Board Member or Committee Member:
  - (i) in defending any criminal proceedings in which that person is acquitted;
  - (ii) in defending any civil proceedings where the person has acted in good faith; and
  - (iii) in connection with an application in relation to such proceedings, in which the Court grants relief to that person.
- (d) The Association may pay the premiums on any policy of insurance in relation to any liability of an officer, Councillor, Board Member or Committee Member, to the fullest extent permitted by law.

## 11. Meeting using technology

---

- (a) Meetings under this Constitution may be held using telephone, audio-visual link up or other instantaneous communication medium, or, if consented to by all Councillors, Board Members or Committee Members (as the case may be), other technology. The consent may be a standing one. A Councillor, Board Member or Committee Member may only withdraw their consent within a reasonable period before the meeting.
- (b) If a meeting is held using any technology and all the Councillors, Board Members or Committee Members as the case may be take part in the meeting, they will be treated as having consented to the use of the technology for that meeting.
- (c) The following provisions apply to a meeting by technology:
  - (i) each of the participants taking part in the meeting must be able to hear and be heard by each of the other participants taking part in the meeting; and
  - (ii) at the commencement of the meeting each participant must announce his or her presence to all the other participants taking part in the meeting.
- (d) A participant may not leave a technology meeting by disconnecting the participant's link to the meeting unless that participant has previously notified the chair of the meeting.
- (e) A participant is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that participant has previously obtained the express consent of the chair to leave the meeting.

## 12. Notices

---

Without prejudice to any other method of giving notice, it shall be sufficient compliance with any provision of the Constitution requiring notice to be given if, with observance of the required time, notice is given:

- (a) in a document delivered to the individual in person;
- (b) in a pre-paid letter or other document addressed and posted to the individual's last known address two (2) days prior to the date by which notice must be given; or

- (c) by electronic mail to the email address supplied by individual to the Association for the purpose of giving notice to him or her in which case delivery shall be deemed to be effected when the sender receives acknowledgment of delivery receipt by the individual.

### **13. Common Seal**

---

- (a) The Council shall have the custody of the common seal of the Association, and the form of such seal and all other matters relating thereto shall be determined at a meeting of the Association.
- (b) The common seal of the Association must only be affixed to any instrument pursuant to an appropriate resolution passed at a meeting of the Association.
- (c) Every instrument to which the common seal is so affixed shall be signed by the President and by two other Councillors.

### **14. Records, Accounting and Audit**

---

#### **14.1 Accounts and other records of the Association**

- (a) The Board must:
  - (i) ensure that proper financial records are kept in accordance with all legal and regulatory requirements; and
  - (ii) ensure that records of its operations are kept; and
  - (iii) take reasonable steps to ensure that the Association's records are kept safe.
- (b) The Association must retain its records for at least seven years.

#### **14.2 Audit**

- (a) The Council must appoint an auditor (or auditors) for the Association and the Educational Bodies..
- (b) The Association must remunerate any auditor.
- (c) Any auditor is entitled to attend any General Meeting and to be heard by the Council on any business of the meeting that concerns the auditor in their capacity as auditor.
- (d) The Association may give any auditor all communications relating to the General Meeting that the Council are entitled to receive.

#### **14.3 Financial statements**

- (a) The Board must ensure that financial statements are prepared annually for all Educational Bodies together with a consolidated set of financial statements for the Association in accordance with all legal and regulatory requirements.
- (b) The accounts as audited in respect of each Financial Year must be forwarded to the Council within twenty one (21) days of being signed by two Board Members.

#### **14.4 Financial instruments**

All cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments and all receipts for moneys paid to the Association shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Board determines.

### **15. Winding up**

---

- (a) The Association may be wound up in accordance with the Act.



- (b) If upon the winding up or dissolution of the Association there remains, after satisfaction of all debts and liabilities (and complying with clause 5(d)), any property or financial assets whatsoever, the same shall not be paid to or distributed amongst the Councillors but shall be given or transferred to an association or institution nominated in accordance with the Act which:
  - (i) is charitable at law; and
  - (ii) has a similar purpose to the Principal Purpose.

## **16. Amendment of Constitution**

---

- (a) Subject to the Statutes this Constitution may be amended from time to time by the Council by way of resolution passed by a four-fifths of all Councillors. The consent of the Congregation Leader is required to vary clauses 6.8 and 16 of this Constitution. The Board must be advised in writing before any amendment takes effect.
- (b) The Council cannot alter the elements referring to or impacting on the role of the Board without first giving written notice to the Board and allowing the Board a minimum of fourteen (14) days to respond to the proposal.
- (c) The Board may recommend changes to the Constitution to the Council, who must meet to consider the proposed changes within thirty (30) days of receipt of the recommendation.